

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL ADAM ASSENBERG,
Plaintiff,

v.

COMMUNITY ACTION CENTER, et al.,
Defendants.

No. CV-08-193-FVS

ORDER DENYING MOTIONS TO
REMAND

THIS MATTER comes before the Court based upon Mr. Assenberg's two motions to remand this case to state court. He is representing himself. The defendants are represented by Michael E. McFarland.

BACKGROUND

Michael Assenberg and his wife applied for federally-subsidized housing assistance. Their application was reviewed by Nancy Whitesell, the Housing Program Coordinator for the Community Action Center ("CAC"). She alleges that Mr. Assenberg's application indicates that he intends to use marijuana to relieve pain. Since the CAC is funded, at least in part, by the Department of Housing and Urban Development ("HUD"), and since federal regulations prohibit the CAC from providing federally-funded housing assistance to a person who is engaging in the illegal use of drugs, the CAC denied the Assenbergs' application. Mr. Assenberg filed an action in Whitman County Superior Court alleging, in essence, that he has a right to use marijuana for medical purposes and that the CAC violated that right by denying his application for housing assistance. The CAC and the other

1 defendants removed the action to federal court on the ground that the
2 Court has original jurisdiction over Mr. Assenberg's claim because it
3 arises under the Constitution and laws of the United States. 28
4 U.S.C. § 1441(a), (b). Mr. Assenberg moves to remand because, in his
5 opinion, his complaint does not raise a federal issue. He argues that
6 his right to use marijuana for medical purposes is secured by state
7 law and, thus, the Court lacks jurisdiction over the subject matter of
8 his claim.

8 **RULING**

9 Mr. Assenberg earnestly believes that, under the law of the State
10 of Washington, he has a statutory right to use marijuana for pain
11 relief, and that his state-secured right to use marijuana for this
12 purpose trumps the federal regulations upon which the CAC relied in
13 denying his and his wife's application for federally-funded housing
14 assistance. Mr. Assenberg seeks declaratory relief, injunctive
15 relief, and damages. Neither side has cited the well-pleaded
16 complaint rule, and it is unclear whether it applies here. Given the
17 authorities that the parties have cited, and the fact that Mr.
18 Assenberg is asking the Court to order the CAC to provide him with
19 federally-subsidized housing assistance, the Court is satisfied that
20 it has original jurisdiction over his claim(s).

19 **IT IS HEREBY ORDERED:**

- 20 1. Mr. Assenberg's motion to strike (**Ct. Rec. 5**) is denied.
- 21 2. Mr. Assenberg's motion to remand (**Ct. Rec. 17**) is denied.

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to the plaintiff and
24 to counsel for the defendants.

25 **DATED** this 5th day of September, 2008.

26 s/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge